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consent is given by the sovereign. *U. S. v. Gleeson*, 124, U. S. 225. In as much as the United States has not given jurisdiction for claims against it for torts its instrumentalities cannot be held liable therefor. *Barnes v. Dist. of Columbia*, 91 U. S. 540, 552; *Schillinger v. U. S.*, 155 U. S. 163. The government is not liable for the negligence or misfeasance of its officers. *Robertson v. Sibel*, 127 U. S. 507. Nevertheless Congress has power to pay claims or debts which rest upon mere equitable or honorary obligation. *U. S. v. Realty Co.*, 163 U. S. 427.

CORPORATIONS—EXAMINATION OF BOOKS—REFUSAL—PENALTY.—*COX v. PAUL*, 67 N. E. 580 (N. Y.).—The Stock Corporation Law imposes a penalty on each officer of the corporation who refuses to exhibit the stock book to a member, and also a like penalty upon the corporation. Plaintiff applied to the secretary for permission to inspect the book but was refused. The next day a like demand was refused. The day following a demand was made upon the president, which was refused but subsequently complied with. *Held*, that these interviews amounted to but one demand and one refusal on one occasion and not on several occasions. *Parker, C. J., Martin and Werner, JJ., dissenting.*

This seems to be a very strict construction of the statute. It was said that the statute being penal in its nature should not be extended, and that ordinarily one penalty would secure the end as effectually as many. But it would seem that had the president thought there would be but one liability the plaintiff would have been obliged to seek legal aid to inspect the books. The court next proceeds to rest its decision upon the arbitrary rule that a party suing for penalties can recover but for one violation prior to the commencement of the action and relies on *Jones v. Rochester Gas & El. Co.*, 168 N. Y. 65, as sanctioning that doctrine, but in that case the penalty was continuing and it was held that after an action was brought another request was necessary to start the running of the penalty anew. In the principle case it would seem that each refusal to permit the plaintiff to examine the books constituted a separate wrong as no injury need be shown. *Kelsey v. Pfandler Process Fermentation Co.*, 3 N. Y. Supp. 723.

CRIMINAL LAW—MARRIAGE OF WITNESS BEFORE TRIAL—TESTIMONY—PREJUDICIAL ERROR.—*MOORE v. STATE*, 75 S. W. 497 (TEX.).—Accused married an eye witness to the crime the day before the trial. The State merely proved by the wife the date of the marriage. *Held*, that such proceeding was prejudicial error, in that it aided the theory of the prosecution that defendant married the witness to suppress her testimony. *Henderson, J., dissenting.*

The bare right of the State to call a witness under the circumstances above was, at common law, a mooted question of evidence. In *Redley v. Wellesley*, 3 C. & P. 558, the wife was considered incompetent; also the husband in *Rex v. Sergeant*, 1 Ry. & M. 352. These cases formed an exception to the rule that a witness cannot, by his own acts, deprive the other party of a right to the testimony. *Greenl., Ev.*, secs. 167, 418 (15th ed.), and cases cited. The principle, rendering a wife an incompetent witness against her husband in criminal actions, except in an offense, one against the other, does not rest on the discretion of the parties. *Stein v. Bowman*, 13 Pet. 209. This rule of exclusion is binding upon the court. 3 *Jones, Ev.*,

sec. 757; *Greenl., Ev.*, sec. 340 (15th ed.). The testimony of a polygamous wife was held cause for reversal in *Bassett v. United States*, 137 U. S. 496. To test competency, either the man or the woman may be examined on the *voir dire* as to marriage, *Seeley v. Engell*, 100 N. Y. 542, but to establish the marriage, proof *aliunde* must be adduced. By admitting that which the witness is used to prove she is *a fortiori* incompetent.

CARRIERS OF PASSENGERS—DEFECTIVE TICKET—EJECTION—REMEDY.—*WESTERN MARYLAND R. CO. v. SCHAUN*, 55 Atl. 701 (Md.).—Because of a defect in her return ticket, due to the negligence of the conductor on the outgoing trip, plaintiff was ejected from the defendant's train. *Held*, that plaintiff could recover in an action *ex contractu* only, and not in one *ex delicto*.

There are decisions which hold that, in such circumstances, the passenger must either pay his fare or leave the train, and sue *ex contractu* *Hall v. M. & C. R. Co.*, 15 Fed. 57; *Townsend v. R. Co.*, 56 N. Y. 295. But the weight of authority is that he may resist ejection, and recover damages therefor. *New York etc., R. Co. v. Winters*, 143 W. S. 60; *Lake Erie, etc., R. Co. v. Fix*, 88 Md. 381; *Wood, R. R's.*, sec. 349. In Massachusetts a distinction is drawn between those cases where the passenger could have perceived the defect in the ticket upon receiving it and where he could not. *Murdock v. R. Co.*, 137 Mass. 293. The form of action usually adopted is one in tort. *Laird v. Traction Co.*, 166 Pa. St. 4; *Gorman v. R. Co.*, 97 Cal. 1. But it would seem that the same result could be reached in one *ex contractu*. *Johnson v. R. Co.*, 46 Fed. 347.

EMINENT DOMAIN—RAILROADS—ERECTION OF VIADUCT—STATIONS.—*DOLAN ET AL. v. NEW YORK & HARLEM R. CO.*, 67 N. E. 612 (N. Y.).—The legislature ordered the erection of a steel viaduct through Park avenue. Upon completion the defendant was required to run its trains over it instead of through a depressed cut and over the highway. It was also required that stations which occupied more of the road than the viaduct, be erected. *Held*, that no damages could be recovered by reason of the construction of the viaduct or operation of trains thereon, but damages may be awarded as a consequence of the erection of the stations.

In most of the cases concerning the Park avenue viaduct in New York City there has been a dissenting opinion and no little difficulty has confronted the courts to ascertain precisely the rule to be followed. *Dolan v. N. Y. & H. R. Co.*, 77 N. Y. Supp. 815. The decision reached in the case under discussion and which seems to define the law is that the building of the viaduct in place of the cut is a public improvement effected through a governmental agency, and hence the defendant is not liable to abutting property owners for damages resulting from the operation of its trains thereon, but the stations are ordered to be erected to afford suitable facilities for the public, and where they interfere with the easements of light, air and access the company is liable. It seems quite impossible, however, to reconcile the first proposition with the decision in *Lewis v. N. Y. & H. R. Co.*, 162 N. Y. 202.

EX POST FACTO LAW—STATUTORY CHANGE OF PUNISHMENT BETWEEN CONVICTION AND SENTENCE.—*STATE v. ROONEY*, 95 N. W. 513 (N. D.).—After